

no C.F.P.

2010 FEB 24 AM 10: 20

CONFIDENTIAL

V.

V.

Defendant.

8-10CV0369-F

38542

2. Plaintiff's petition filed in the State Court Action was served upon Defendant on or

about February 18, 2010. Plaintiff-Intervenor's complaint was filed in the State Court Action on or about February 23, 2010. Therefore, this removal is timely under 28 U.S.C. § 1446(b).

3. A true and correct copy of the complaint in the State Court Action is included in Exhibit A attached hereto and incorporated herein. Exhibit A includes all process and pleadings with which Defendant was served regarding the State Court Action.

4. The State Court Action includes requests to seek determinations of the parties' respective rights and responsibilities under trade secret and copyright laws, including the federal Uniform Trade Secrets Act (the "Trade Secrets Act") and the Copyright Act of 1976, as amended, 17 U.S.C. § 106 et seq. (the "Copyright Act"). See Exhibit A (hereinafter "Complaint"). The nucleus of operative facts in the State Court Action includes BroadStar Wind Systems Group, LLC's ("BroadStar") assertion that a "pitch schedule program and calculator" are BroadStar's "trade secrets" and "confidential information" developed by and exclusive to BroadStar and any other's use of such information constitutes "unfair competition" and "misappropriation." Because these allegations are predicated on rights governed exclusively by federal law, they present a federal question requiring removal of this action to this Court.¹

Removal Jurisdiction

5. Stephens hereby removes this action to the United States District Court for the District and Division in which the action is now pending, specifically, the United States District

¹ The true nature of a pleading is determined by its substance, not its label. *Edwards v. City of Houston*, 78 F.3d 983, 995 (5th Cir.1996) (en banc) ("[W]e have oft stated that 'the relief sought, that to be granted, or within the power of the Court to grant, should be determined by substance, not a label'" (quoting *Bros. Inc. v. W.E. Grace Mfg. Co.*, 320 F.2d 594, 606 (5th Cir.1963)). The inquiry of whether federal law (e.g., patent or copyright protection) preempts state law (e.g., trade secret protection) focuses on whether state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Court for the Northern District of Texas, Dallas Division, under 28 U.S.C. § 1441. Removal is based on federal question jurisdiction.

6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 (a), because the underlying facts alleged and rights asserted in the State Court Action, including the claims for unfair competition, are based on matters protected under the Trade Secrets Act and the Copyright Act and which, given the underlying facts alleged and rights asserted in the State Court Action, are preempted under the laws of the United States, including the Trade Secrets Act and the Copyright Act. Because federal law preempts the claims in the State Court Action, the State Court Action is removable. See *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 23-24, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987).

7. This Court has supplemental jurisdiction over the State Court Action claims for unfair competition and misappropriation of trade secrets (the "Misappropriation Claim") pursuant to 28 U.S.C. § 1367(a). The Misappropriation Claim is removable pursuant to 28 U.S.C. § 1441(c) because it is joined with the State Court Action's preempted claims, over which the Court has original jurisdiction under 28 U.S.C. § 1331.

8. Promptly after filing this Notice of Removal, Defendant will serve a copy of it upon all parties to the State Court Action and will file a copy with the Clerk of the District Court of Dallas County, State of Texas.

9. This action is properly removed to this Court under 28 U.S.C. § 1446(a) because the State Court Action is pending in the District Court of Dallas County, State of Texas, which lies within this District and Division.

Respectfully submitted,

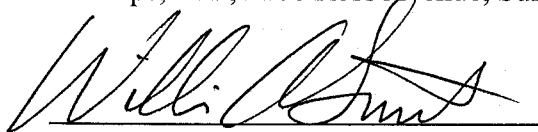
SMITH & DAVIS PLLC

By: 

William A. Smith
State Bar No. 18701600
10440 No. Central Expressway
Suite 1295
Dallas, TX 75231
(214) 969-0909
(214) 969-5588 Telecopier
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

^{24th}
The undersigned hereby certifies that on the ~~23rd~~ day of February 2010, a true and correct copy of the above and foregoing instrument was served by certified mail, return receipt requested upon the following: Andrew M. Gould, Wick Phillips, LLP, 2100 Ross Avenue, Suite 950, Dallas, Texas 75201.



William A. Smith

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Broadstar Wind Systems Group, LLP

(b) County of Residence of First Listed Plaintiff Dallas, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrew M. Gould, WickPhillips, LLP
2100 Ross Ave., Suite 950, Dallas, TX 75201 (214) 692-6200

DEFENDANTS

Stephens, Thomas

County of Residence of First Listed Defendant Dallas, TX
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

William A. Smith, Smith & Davis, PLLC
10440 N Central Expy., Ste 1205 Dallas, TX 75243-1205 (214) 968-0909

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1331 & 28 USC 1338(a)

Brief description of cause:

Seek declaration of rights under the Trade Secrets Act and Copyright Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) (See instructions) PENDING OR CLOSED:

JUDGE

DOCKET NUMBER

DATE

2/24/2010

SIGNATURE OF ATTORNEY OF RECORD

William A. Smith

FOR OFFICE USE ONLY

RECEIPT #

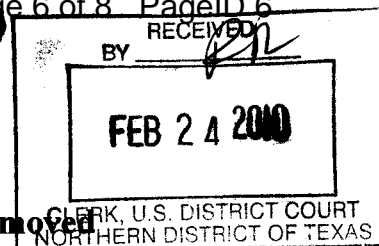
AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

United States District Court
Northern District of TexasSupplemental Civil Cover Sheet For Cases Removed
From State Court

3-10CV0369-F

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court
191st District Court
Dallas County

Case Number
10-01656

2. Style of the Case: Broadstar Wind Systems Group, PLLC v Thomas Stephens

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type
See attached

Attorney(s)

3. Jury Demand:

Was a Jury Demand made in State Court?

☐ Yes

☒ No

If "Yes," by which party and on what date?

Party

Date

Supplemental Civil Cover Sheet
Page 2

4. **Answer:**

Was an Answer made in State Court?

☐ Yes

☒ No

If "Yes," by which party and on what date?

Party

Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

N/A

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

N/A

7. **Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Claim(s)

Broadstar - Plaintiff
Stephens - Defendant
Bargee - Intervenor

Alleges ownership of proprietary info
Denies Plaintiff owns info
Claims ownership of info

2.

Party and Party Type

Attorneys

Plaintiff-Broadstar Wind Systems Group, PLLC

Wick Phillips, LLP
Andrew M. Gould
00792541
2200 Ross Ave.
Suite 950
Dallas, TX 75201
(214) 692-6200

Defendant-Thomas Stephens

Smith & Davis, PLLC
William A. Smith
18701600
10440 N. Central. Expy.
Suite 1295
Dallas, TX 75231
(214) 969-0909

Intervenor-Mark Bergee

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Nashville, Tennessee 37203 USA
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